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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,212	02/06/2002	Neal E. Fearnot	3433-338	8926

7590 09/19/2006

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Indianapolis, IN 46204-5137

EXAMINER

BARRETT, THOMAS C

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 09/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/068,212	Applicant(s) FEARNOT ET AL.	
	Examiner Thomas C. Barrett	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2006.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-16 and 27-29 is/are allowed.
- 6) ☒ Claim(s) 17-26 and 30-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 27, 2006 has been entered.

### ***Response to Arguments***

Applicant's arguments filed July 27, 2006 have been fully considered but they are not persuasive in regards to all claims. Contrary to the Applicant's arguments, Khosravi et al. does disclose tubes without holes in them, e.g. Figs. 22 and 27-29. Furthermore, "configured as vessel grafts" is functional language and is given less patentable weight. The tube of Khosravi et al. can be used as a vessel graft.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16-26 and 30-45 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Khosravi et al. (5,618,299) as above in view of Hiles et al. (WO 98/25543). Khosravi et al. discloses a medical device (FIG. 26) comprising: a plurality of

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apertures (395) and extensions (390) shaped to be inserted into the apertures, thus attaching the extension to an underlying surface, and three layers comprising the two polymer layers as shown in FIG. 2, and an "intermediate" layer of pyrolytic carbon, a biomaterial (col. 3, line 56- col. 4, line 4). The extensions in the apertures as in FIG. 26 create non-continuous seams and a plurality of longitudinal seam edges. However, Khosravi et al. fails to disclose the device comprising a compliant collagenous material. Hiles et al. teaches a medical device comprising submucosa tissue (a compliant collagenous material) from porcine small intestine (p 4, lines 6-12), which is remodeled into host replacement tissue with site-specific structural and functional properties (p 3, lines 14-24). It would have been obvious to one of ordinary skill in the art to combine the teaching of a medical device comprising submucosa tissue (a collagenous material), as taught by Hiles et al., to a tubular medical device as per Khosravi et al., in order to provide a material that is remodeled into host replacement tissue with site-specific structural and functional properties.

### ***Allowable Subject Matter***

Claims 1-15 and 27-29 are allowed over the prior art of record.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas C. Barrett whose telephone number is (571) 272-4746. The examiner can normally be reached on Mon. -Fri. from 9:00-5:30.

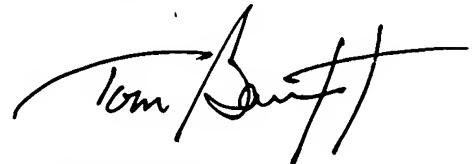
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Thomas C. Barrett  
Examiner  
Art Unit 3738

A handwritten signature in black ink, appearing to read "Tom Barrett", with a stylized flourish extending from the end.

TOM BARRETT  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 3700